IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11434 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VINODBHAI B. TRIVEDI

Appearance:

1. Special Civil Application No. 11434 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR MAULIK J SHELAT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/03/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner - Corporation and Mr.M.J. Shelat, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Labour Court, Bhavnagar in Reference No.245 / 1998 dated 21st October, 2000, wherein the labour court has granted reinstatement with continuity of service without backwages of the interim period. This Court has issued RULE vide order dated 10th December, 2001 and fixed the matter for final hearing on returnable date and also issued notice as to interim relief returnable on 26th December, 2001. Today, when this matter is called out, with the consent of the learned advocates for the parties, this matter is finally heard and the same is being disposed of accordingly.

#. Learned advocate Mr.Munshaw on behalf of the petitioner Corporation has vehemently submitted that in this case the respondent conductor has recovered fare from nine passengers of two different groups and not issued the tickets. On the basis of the said allegation, chargesheet was served on the respondent workman and after completion of the departmental inquiry, dismissal order dated 8th May, 1998 came to be passed by the petitioner Corporation against the respondent workman. Learned advocate Mr.Munshaw has submitted that the labour court has committed error when legality and validity of the inquiry has been admitted by the respondent workman and only finding was under challenge and while coming to the conclusion that the charge levelled against the respondent workman is found to have proved and in that case, interference under Section 11-A of the Industrial Disputes Act is without jurisdiction. Mr.Munshaw, learned advocate has also submitted that the past record of the respondent workman is bad and in past also, the workman has committed misconduct on number of occasions and therefore also, interference by the labour court is erroneous which requires to be rectified by this Court. Mr.Munshaw, learned advocate has also submitted that the labour court has denied backwages by way of penalty but in such gross case, punishment of denial of backwages is not sufficient punishment but some more severe punishment requires to be imposed on the respondent workman while exercising the powers under Section 11-A of the I.D.Act, 1947.

#. Learned advocate Mr.Shelat appearing on behalf of the respondent workman has submitted that the labour court has rightly appreciated the evidence which were on record. The respondent workman had not recovered the fares from any passenger but his misconduct is only relating to doing road booking in long route bus which is contrary to the Rules of the S.T. Corporation. That his traffic cash was not checked. It is also noticed that explanation was tendered by the respondent workman at the

time of checking to the Checking Inspector and given detailed statement to the Checking Inspector that he has not recovered fares from any passenger and bus was checked during this period and that is how, allegation has been made against the respondent workman. Mr.Shelat, learned advocate has also submitted that the past record was not produced by the petitioner Corporation before the labour court and therefore, now it is produced before this Court, same cannot be considered by this Court against the respondent workman. However, he alternatively submitted that if this Court considers that denial of backwages is not sufficient looking to the misconduct in question, then some punishment may be imposed by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. Looking to the allegations made against the respondent workman in the report dated 27th July, 1997, the respondent conductor was on duty on bus from Morbi - Barwala - Morbi and at that time, his bus was checked by checking staff and according to the reporter, from five passengers of one group travelling from Old Bus Stand of Morbi fare was collected by the respondent workman and similarly, from another four passengers travelling from Morbi to Ghutu though fare was collected by the respondent workman but no tickets were issued to them. It was also alleged that way bill was found open at the time from starting point Morbi. Therefore, chargesheet was served on the respondent workman on 11th September, 1997, against which, reply was submitted by the respondent workman on 15th September, 1997 interalia stating that at the time of incident in question, the workman was sick and he was on double duty. That the workman had also produced medical certificate for his sickness on the date of incident, was also produced along with reply to the chargesheet. The statement of the respondent workman was also obtained by the checking staff. In the said statement, the respondent workman has given explanation that from group of five passengers, when he reached to them, one passenger gave a currency note of Rs.100/- and therefore the respondent workman informed the concerned passenger to give exact amount of the tickets amount. In the mean time, the bus which has just cross 6 kms from the stop, was checked by the checking staff and therefore, impugned tickets were obtained, so also, statements of the passengers were also recorded by the checking staff. Similarly, from another group of four passengers travelling from Morbi to Ghutu, the workman during the course of enquiring with the passengers where they want

to go, meanwhile bus was checked and therefore, at the relevant time, the checking staff had ordered to workman not to do any further booking and immediately way bill was taken away for inspection. However, it was explained by the respondent workman that at the time of checking, his ball pen was missing and since no pen was available and therefore the way bill from Morbi was kept open. It was also pointed out by the respondent workman that he was on double duty and his health was not good. This was the first statement given by the respondent workman to the checking staff. In response to this statement, during the course of departmental inquiry, a specific question was put in cross examination to the reporter by the representative of the respondent workman that whatever statement given by the respondent conductor at the spot at the time of checking, whether the reporter was agreed that very statement given by the conductor or not ? The reporter has given answer to the effect that he has partly agreed with the statement given by the respondent conductor but he stated that he was not agreed that in long route, stand booking was not being done but according to him, the respondent workman was found to have indulged in road booking after closing way bill. Therefore, the workman was found to have committed breach of Rules of the S.T. Corporation. This aspect transpires from original record which is shown to this Court by learned advocate Mr.Munshaw. I have perused the questionnaires raised in the departmental inquiry and therefore though this is not the matter discussed by the labour court in award but the correct fact which was on record before the Departmental Inquiry. In view of this evidence led in the departmental inquiry and considering the fact that the workman was on double duty continuously and he produced medical certificate before the departmental authority for justifying sickness on the date of incident and the fact that the reporter has agreed that the workman has violated the rules by doing road booking and way bill was open, except that explanation about recovering the fare has been accepted by the reporter. Therefore, considering all these aspects of the matter and looking to the observations made by the labour court that statement which has been given by the respondent workman on the spot, at the most, the respondent workman can be said to be responsible for doing road booking and for not closing the way bill but for such misconduct, punishment of dismissal is found to be disproportionate by the labour court. The labour court has also observed that in local bus, normally situation is that the respondent workman must have to start road booking, otherwise, the bus would not reach the destination in time. The labour court has considered

the past record not produced before him but there was some submissions on behalf of the petitioner that in past the workman had committed similar type of misconduct but no record was produced. Therefore, considering all these aspects of the matter, the labour court has granted reinstatement and also considered one more aspect that just to deny backwages of the interim period for the period from 1998 to 2000 would be sufficient punishment. However, looking to the overall facts and circumstances of the case, mere denial of backwages in such cases cannot be considered to be sufficient punishment and therefore, it was duty of the labour court to impose some severe punishment especially when misconduct is found to have proved against the respondent workman.

#. I have considered the overall facts and circumstances of case. The misconduct in part is found to have proved before the labour court against the respondent workman. Therefore, when misconduct is found to have proved in light of the evidence led in the departmental inquiry, according to my opinion, if punishment of stoppage of three increments with permanent effect is imposed on the respondent workman, will meet the ends of justice. However, this Court is not inclined to disturb the relief of reinstatement with continuity of service awarded by the labour court in favour of the respondent workman and the same will remain unaltered accordingly.

#. In the result, present petition is partly allowed. The award passed by the labour court, Bhavnagar in Reference No.245 / 1998 dated 21st October, 2000 is modified to the effect that the respondent workman has to suffer punishment of stoppage of three increments with cumulative effect. The directions of the labour court granting reinstatement in favour of the respondent workman with continuity of service without backwages of the interim period is not disturbed by this Court. The award in question as modified hereinabove has to be implemented by the petitioner Corporation forthwith.

#. In light of above observations and directions, present petition stands partly allowed. Rule is made absolute to the extent indicate above. No order as to costs. No order as to costs.

Direct Service to respondent is permitted.

Date : 18-3-2002 [H.K.Rathod, J.]

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